

FILED ORIGINAL

MAR 03 2005

NEW JERSEY BOARD OF
CHIROPRACTIC EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

Administrative Action

DANIEL FONTANELLA, D.C. :
License No. MC 4066 :

FINAL ORDER
OF DISCIPLINE

TO PRACTICE CHIROPRACTIC :
IN THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Chiropractic Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent, Daniel Fontanella, D.C., is a chiropractic physician in the State of New Jersey and has been a licensee at all times relevant hereto.

2. On or about March 15, 2001, Respondent pleaded guilty in the Superior Court of Passaic County, New Jersey, to Accusation No. 01-03-0192A, alleging his violation of N.J.S.A. 2C:20-4 (Theft by Deception) by creating or falsifying treatment and billing records in his chiropractic practice to reflect that he performed examinations and rendered treatments to patients which were not done. Respondent was sentenced to a term of five years probation and 364 days in the Passaic County Jail. A consent judgment for restitution was entered in the amount of \$500,000.00.

CONCLUSIONS OF LAW

1. The aforesaid plea and conviction provides grounds for the revocation of Respondent's license to practice chiropractic in New Jersey pursuant to N.J.S.A 45:1-21(f) in that the crime of which Respondent was convicted is one of moral turpitude which relates adversely to the practice of chiropractic.

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline provisionally revoking respondent's license to practice chiropractic in the State of New Jersey was entered on October 7, 2004 and a copy served on respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated findings of fact or conclusions of law by submitted a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

Respondent, in a letter dated November 3, 2004, asked the Board to suspend, rather than revoke his license; and to have an opportunity to appear before the Board prior to any decision being reached. Respondent was subsequently notified that a hearing on the issue of mitigation of penalty had been scheduled for February 17, 2005. On that date, respondent appeared with counsel to ask that some lesser penalty be imposed.

The arguments raised on behalf of respondent were that his criminal conduct was the result of an involvement with cocaine, and that he had entered a treatment program and had been drug-free for years. In addition, he had married, had recently become a father, and this and his religious principles were contributing to maintaining him on a law-abiding path. Respondent explained that, although he had initially been sentenced to 364 days in county jail, the prosecutor in his criminal

case had appealed this sentence, and ultimately he had been resentenced to three years in State prison. He ultimately served ten months of that sentence. Respondent indicated that he was currently practicing chiropractic in New York.

The Board does not believe the alternative of imposing a defined period of suspension upon respondent, in lieu of revocation, is appropriate in this instance. The Board bases its decision on the criminal acts respondent admitted to engaging in relating to his practice of chiropractic in his plea allocution of March 15, 2001. This conduct, rather than any conduct related to the circumstances mentioned in the Consent Order dated December 22, 1998 which resulted in respondent's suspension, is the conduct addressed by the Board's present action. Respondent's conduct involved multiple acts, a pattern of behavior constituting an elaborate scheme to defraud. Significant amounts of money were taken from insurance companies, thus imposing a burden upon a health care system already struggling with burgeoning health care costs and limited health care dollars. The transcripts of respondent's plea allocution reveal that respondent admitted to having obtained \$500,000.00 from various insurance companies by creating or falsifying treatment records and billing records to reflect that he performed examinations and rendered treatments to patients which never occurred. The criminal conduct was deliberate, rather than an isolated act, and it was longstanding: lasting from January of 1996 through December of 1997.

General deterrence, as well as specific deterrence, are factors in the Board's decision here. The Board finds it necessary to impose the ultimate sanction here, in response to this criminal act, to demonstrate its severe condemnation of respondent's conduct. Moreover the public trust is implicated here: respondent's conduct is such as may foster a lack of faith in the health care profession on the part of the public, and to restore the public trust, a sanction commensurate with the gravity of the conduct is necessary.

Moreover, the Board notes that respondent, although ordered to pay restitution of \$500,000.00 by the court, admitted at the hearing that he has to date paid only approximately

\$1,000.00, and that he ceased making restitution payments at all several years ago. While respondent's counsel indicated that counsel's firm was drafting some sort of consent agreement or compromise with regard to the monies owed by respondent in connection with the restitution and/or fines imposed on respondent, the Board felt nevertheless that a steady stream of restitution payments over the years, even in miniscule amounts, would have more appropriately indicated respondent's rehabilitation. The fact that respondent is currently practicing as a chiropractor in New York, and that his present employer is unaware of his criminal history, was another factor which the Board considered.

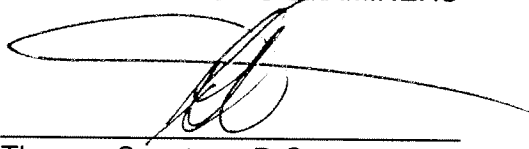
ACCORDINGLY, IT IS on this 3rd day of *March*, 2005,

ORDERED that:

1. Respondent's license to practice chiropractic in the State of New Jersey shall be and hereby is **revoked**.

NEW JERSEY STATE BOARD
OF CHIROPRACTIC EXAMINERS

By:


Thomas Senatore, D.C.
Board President